

5

**Notice of Allowability**

Application No.

09/726,290

Examiner

J. Derek Rutten

Applicant(s)

KEHNE ET AL.

Art Unit

2192

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Appeal Brief filed 2/2/05.
2. ☒ The allowed claim(s) is/are 1-36.
3. ☒ The drawings filed on 06 March 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

  
**TUAN DAM**  
**SUPERVISORY PATENT EXAMINER**

### **DETAILED ACTION**

1. Acknowledgement is made of Applicant's Appeal Brief dated 2 February 2005, responding to the 4 June 2004 Final Office action provided in the rejection of claims 1-36.

Applicant's arguments have been fully considered by the examiner.

2. On pages 9-15 of the Appeal Brief, Applicant addresses the rejections of claims 1, 3, 4, 6, 7, 10, 12, 13, 15, 16, 18, 19, 22, 24, 25, 27, 28, 30, 31, 34, and 36, under 35 U.S.C. 103(a) as being unpatentable over Applicant's admission of prior art on pages 1 and 2 of the originally filed specification (hereinafter referred to as "APA"), in view of U.S. Patent 5,822,692 to Krishnan et al. published on October 13, 1998 (hereinafter referred to as "Krishnan"), further in view of U.S. Patent 5,339,450 to Nagahara (hereinafter referred to as "Nagahara"). At the bottom of page 11, Applicant essentially argues that the Nagahara reference deals with re-initializing a computer following a system failure, and does not relate to updating firmware. Further, on page 13, Applicant essentially argues that the combination of the references is improper. These arguments have been fully considered and are persuasive. The rejection of claims 1-36 has been withdrawn.

### ***Allowable Subject Matter***

3. Claims 1-36 have been allowed.

4. The following is an examiner's statement of reasons for allowance: The cited prior art taken alone or in combination fail to teach, in combination with the other claimed limitations, a

Art Unit: 2192

service processor that responds to a notification that an operating system has completed an initialization procedure by checking for a current level of firmware, and updating the firmware if it is not a current level of the firmware, in a background operation after receiving the notification. These limitations are present in each of independent claims 1, 7, 13, 19, 25 and 31. The distinctions provided by the independent claims apply equally to all dependent claims. Thus all claims 1-36 are allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Derek Rutten whose telephone number is (571) 272-3703. The examiner can normally be reached on T-F 6:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2192

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jdr



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